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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/749,175	12/30/2003	Adrian P. Stephens	1000-0030	7872
7590 The Law Offices of John C. Scott, LLC c/o PortfolioIP P.O. Box 52050 Minneapolis, MN 55402			EXAMINER JAIN, RAJ K	
			ART UNIT 2416	PAPER NUMBER
			MAIL DATE 02/20/2009	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/749,175

Applicant(s)

STEPHENS ET AL.

Examiner

RAJ JAIN

Art Unit

2416

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 December 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-43 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-11,13,14,16-22, 24-27 and 29-43 is/are rejected.
- 7) ☒ Claim(s) 3,12,15,23 and 28 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsman's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Objections

Claims 20 and 39 are objected to because of the following informalities: The subject claims recite “capable of” in lines 3 and 2 respectively, which does not limit the scope of the claim, suggest deleting the term or use of another limiting term. Appropriate correction is required.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claim(s) 1-19 is/are rejected under 35 U.S.C. 101 as not falling within one of the four statutory categories of invention. While the claims recite a series of steps or acts to be performed, a statutory “process” under 35 U.S.C. 101 must (1) be tied to particular machine, or (2) transform underlying subject matter (such as an article or material) to a different state or thing. See page 10 of *In Re Bilski* 88 USPQ2d 1385. The instant claims are neither positively tied to a particular machine that accomplishes the claimed method steps nor transform underlying subject matter, and therefore do not qualify as a statutory process.

The elements of Claim(s) 1 of “identifying, selecting and initiating...” are broad enough that the claim could be completely performed mentally, verbally or without a machine nor is any transformation apparent and further;

1) does not tie to another statutory class (such as a particular apparatus) by identifying the apparatus that accomplishes the method steps; and

2) does not have a structure required by the claim, or positively recited in the body of the claim in association with a step significant to the inventive concept.

A claim reciting an adequate structural tie must positively recite the structure of another statutory category in association with a step significant to the inventive concept. The following are examples of structural recitations **that do not constitute** adequate

structural ties per se: (1) Structure recited in a preamble alone, (2) structure in a phrase expressing intended use or purpose, and (3) structure in a step insignificant to the inventive concept, such as nominal pre or post solution activity.

Claims 2-19 are rejected due their dependency upon a rejected base claim.

Claim Rejections - 35 USC § 112

Claims 32-38 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Claim 32 recites "A computer readable storage medium having instructions.....", the specification fails to disclose an "A computer readable storage medium having instructions.....". Suggest deleting the claims.

Appropriate correction is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim(s) 1, 2, 4-6, 17-22, 24, 25, 32-34 and 39-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walton et al (US 2005/0111599 A1) in view of Hilsenrath et al (USP 6,026,304).

Regarding claims 1, 20, 32 and 39, Walton discloses a method and system for use in a SDMA wireless network (abstract, fig. 1; Para 5, 21), comprising:

identifying a plurality of orthogonal sets of user devices (Fig. 1; subscribers 120 receive orthogonal SDMA signaling from access point 110; Para 5, 7, The loading at the cells affects the overall performance (e.g., throughput) of the system. At low loads, the available system resources may be divided into sets of "orthogonal" channels, which

may then be assigned to the cells, one channel set per cell in a reuse cluster. Because the channels in each set are orthogonal to the channels in other sets, interference on these orthogonal channels is low, and high C/I values may be achieved.),

wherein each orthogonal set in said plurality of orthogonal sets includes multiple user devices that can be transmitted to concurrently by an access point (Fig. 1 shows multiple users 120 with access point 110 transmitting/receiving, paras 5 & 21) using different antenna beams (Fig. 1, the AP transmits via different antenna beams paras 5, 7-9, 22);

selecting an orthogonal set from the plurality of orthogonal sets for use in transmitting data to the corresponding user devices based on a predetermined selection criterion (Paras 97 and 117 selection criterion can be based on SNR or quality of service or some other factors as defined by a user).

Walton fails to disclose initiating after selecting an SDMA exchange for the selected orthogonal set.

Hilsenrath discloses an exchange of selected sets of subscribers (col 10 lines 20-35). Exchange of selected sets of subscribers resolves location ambiguity with a communication system. Thus it would have been obvious at the time the invention was made to incorporate the teachings of Hilsenrath within Walton so as to resolves location ambiguity with a communication system.

Regarding claims 2, 22 and 33, Walton discloses selecting an orthogonal set includes selecting a set based on an amount of data that is buffered for delivery to user devices within each of said identified orthogonal sets (Para 6, data is transmitted to and/or from each selected user terminal in a manner to achieve good system performance and/or desired QoS or bandwidth efficiency as appropriate).

Regarding claims 4, Walton discloses Qos criteria (Para 117).

Regarding claims 5, Walton discloses selecting an orthogonal set includes using latency related information as part of said predetermined selection criterion (delay diversity is used to accommodate multipath, Para 130).

Regarding claims 6, 25, 34, 42, Walton discloses simultaneously transmitting data to user devices in said selected orthogonal set, using corresponding antenna beams, so that a terminal end of the data transmitted to each user device occurs at substantially the same time (Fig. 1, the AP transmits via different antenna beams paras 5, 7-9, 22 transmitting at substantially the same time to the selected set of subscribers).

Regarding claims 21, 40, Walton discloses an antenna controller (Figs. 1 & 8, an antenna controller 430 to manage the generation of antenna beams to be transmitted users 120, Para 21.).

Regarding claim(s) 17, Walton discloses a generic request message or packet transmission (Para 173-174), Examiner understands that while this a generic packet request sequencing, however, one skilled in the art will appreciate that specialized packet messaging can easily be achieved such as sending and/or receiving a training request packet with no deviation in the scope of the claim.

Regarding claim(s) 18 and 19, Walton discloses transmission with one or more antenna beams to encompass the entire coverage area (Fig. 1, AP 110 transmitting thru entire coverage area).

Regarding claims 24 and 41, Walton discloses controller initiates said SDMA exchange by causing said multi-user wireless transceiver to transmit data to each of the user devices in said selected orthogonal set using a separate antenna beam for each user device (Figs. 1 & 8, the AP transmits via different antenna beams paras 5, 7-9, 22, also the AP has controller 430 for appropriate control and management of the antenna beam).

Claims 7-11, 13, 14, 16, 26, 27, 29-31, 35-38 and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walton et al (US 2005/0111599 A1) in view of Hilsenrath et al (USP 6,026,304) further in view of Kasami et al (US 20020181492 A1).

Regarding claim(s) 7, 26 and 27, Walton and Hilsenrath fail to explicitly disclose an ACK request between one or more SDMA antenna beams and respective users and/or user groups. Kasami discloses an ACK request between one or more SDMA antenna beams and respective users and/or user groups (see Figs. 2, 3, paras 6, 65-69,

106-109). Each subscriber within a group transmits an ACK back to the access point and therefore acknowledging proper receipt of data. The use of ACK packets allows for retransmission of data packets from the Access point to subscribers only for lost packets and not an entire data stream and thus improving network performance by reducing the number of data packets that have to be retransmitted. Thus it would have been obvious at the time the invention was made to incorporate the teachings of Kasami within Walton so as to improve network performance by reducing the number of data packets that have to be retransmitted due to packet loss.

Regarding claim(s) 8, 35, Walton and Hilsenrath fail disclose an ACK request between one or more SDMA antenna beams and respective users and/or user groups. Kasami discloses an ACK request to each user device in said selected orthogonal set after said data has been transmitted (para 126). Reasons for combining same as for claim 7.

Regarding claim(s) 9, 10, and 36, Walton and Hilsenrath fail disclose transmitting an ACK request includes transmitting a separate ACK request to each user device in said selected orthogonal set using a corresponding antenna beam. Kasami discloses an ACK request between one or more SDMA antenna beams and respective users and/or user groups (see Figs. 2, 3, paras 6, 9, 65-69, 106-109). Reasons for combining same as for claim 7.

Regarding claim(s) 11, 13, 14, 16, 29, 30, 31, 37, 38 and 43, Walton and Hilsenrath fail disclose separate ACK requests each include time information indicative of a time at which a corresponding user device is to respond to said ACK request. Kasami discloses time indication for each ACK request (see abstract, para 67). Providing a time limit for ACK responses reduces network congestion by reducing number of retransmission of packets. Thus it would have been obvious at the time the invention was made to incorporate the teachings of Kasami within Walton so as to reduce retransmission of packets.

Allowable Subject Matter

Claims 3, 12, 15, 23 and 28 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments with respect to claims 1-43 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to RAJ JAIN whose telephone number is (571)272-3145. The examiner can normally be reached on M-TH.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Trost can be reached on 571-272-7872. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Raj K. Jain/

Examiner, Art Unit 2416